

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

**ACTIVEVIDEO NETWORKS, INC.,**

**Plaintiff,**

**V.**

Case No. 2:10-cv-00248-RAJ-FBS

**VERIZON COMMUNICATIONS INC.,  
VERIZON SERVICES CORP.,  
VERIZON VIRGINIA INC., and  
VERIZON SOUTH INC.,**

**PUBLIC VERSION**

**Defendants.**

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

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## **I. STATEMENT OF UNDISPUTED FACTS**

This Statement of Undisputed Facts is submitted in compliance with Eastern District of Virginia Local Rule 56(B).

<sup>1</sup> Verizon has concurrently filed a Motion for Leave to Amend Answer to include the defenses of license and release based on the recently discovered ActiveVideo-TV Guide Agreement.



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## II. STANDARD FOR SUMMARY JUDGMENT

Under Federal Rule of Civil Procedure 56(a), a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

To avoid summary judgment, a plaintiff must present “specific facts showing that there is a genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal quotation marks omitted; emphasis in original); see *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). “A trial, after all, is not an entitlement. It exists to resolve what reasonable minds would recognize as real factual disputes.” *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985); see *Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir.

1993); *Guinness PLC v. Ward*, 955 F.2d 875, 883 (4th Cir. 1992); *Felty v. Graves-Humphreys Co.*, 818 F.2d 1126, 1128 (4th Cir. 1987); *see also Estate of Kimmell v. Seven Up Bottling Co. of Elkton, Inc.*, 993 F.2d 410, 412 (4th Cir. 1993) (nonmovant must show “specific” facts justifying a trial). Because there are no genuine issues for trial on the defenses of release and license, the Court should grant Verizon’s motion for summary judgment.

### III. ARGUMENT

ActiveVideo's First Amended Complaint asserts claims of patent infringement against four Verizon defendants. *See supra* Section I.D., ¶ 33. [REDACTED]

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<sup>2</sup> Covenants not to sue are recognized as a basis for dismissing an action. In the context of declaratory judgment actions, for example, the Federal Circuit has repeatedly and consistently held that a covenant not to sue for patent infringement divests the trial court of subject matter jurisdiction because the covenant eliminates any case or controversy between the parties. *See Super Sack Mfg. Corp. v. Chase Packaging Corp.*, 57 F.3d 1054, 1060 (Fed. Cir.1995); *see also Dow Jones & Co. v. Abilene Ltd.*, 606 F.3d 1338, 1346-47 (Fed. Cir. 2010); *Benitec Australia, Ltd. v. Nucleonics, Inc.*, 495 F.3d 1340 , 1354-55 (Fed. Cir. 2007); *Intellectual Prop. Dev., Inc. v. TCI Cablevision of Calif., Inc.*, 248 F.3d 1333, 1342 (Fed. Cir. 2001) (statement of non-liability divested the district court of Article III jurisdiction); *Amana Refrigeration, Inc. v. Quadlux, Inc.*, 172 F.3d 852, 855 (Fed. Cir. 1999).

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IV. CONCLUSION

[REDACTED]

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Dated: January 31, 2011

Respectfully submitted,

**VERIZON COMMUNICATIONS INC.,  
VERIZON SERVICES CORP.,  
VERIZON VIRGINIA INC. and  
VERIZON SOUTH INC.**

/s/

Gregory N. Stillman (VSB #14308)  
Brent L. VanNorman (VSB #45956)  
**HUNTON & WILLIAMS LLP**  
500 East Main Street, Suite 1000  
Norfolk, VA 23510  
Telephone: (757) 640-5300  
Facsimile: (757) 625-7720  
gstillman@hunton.com  
bvannorman@hunton.com

Brian M. Buroker (VSB # 39581)  
Bradley T. Lennie (*Pro Hac Vice*)  
Justin T. Arbes (*Pro Hac Vice*)  
**HUNTON & WILLIAMS LLP**  
1900 K Street, NW  
Washington, DC 20006  
Telephone: (202) 955-1500  
Facsimile: (202) 778-2201  
bburoker@hunton.com  
blennie@hunton.com  
jarbes@hunton.com

Henry B. Gutman (*Pro Hac Vice*)  
Noah M. Leibowitz (*Pro Hac Vice*)  
Lisa H. Rubin (*Pro Hac Vice*)  
**SIMPSON THACHER & BARTLETT LLP**  
425 Lexington Avenue  
New York, NY 10017-3954  
Telephone: (212) 455-2000  
Facsimile: (212) 455-2502  
hgutman@stblaw.com  
nleibowitz@stblaw.com  
lrubin@stblaw.com

John Thorne (*Pro Hac Vice to be submitted*)  
**VERIZON CORPORATE RESOURCES GROUP LLC**  
1320 North Courthouse Road  
Arlington, VA 22201  
Telephone: (703) 351-3900  
Facsimile: (703) 351-3670  
john.thorne@verizon.com

Leonard C. Suchyta (*Pro Hac Vice*)  
John P. Frantz (VSB #41450)  
Caren K. Khoo (*Pro Hac Vice*)  
**VERIZON CORPORATE RESOURCES GROUP LLC**  
One Verizon Way  
Basking Ridge, NJ 07920  
Telephone: (908) 559-5623  
Facsimile: (908) 766-6974  
leonard.suchyta@verizon.com  
john.frantz@verizon.com  
caren.khoo@verizon.com

Michael K. Kellogg (*Pro Hac Vice*)  
Mark C. Hansen (*Pro Hac Vice*)  
**KELLOGG, HUBER, HANSEN, TODD,  
EVANS & FIGEL, P.L.L.C.**  
1615 M Street, NW, Suite 400  
Washington, DC 20036  
Telephone: (202) 326-7900  
Facsimile: (202) 326-7999  
mkellogg@khhte.com  
mhansen@khhte.com

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2011, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following counsel of record:

Stephen E. Noona (VSB #25367)  
**KAUFMAN & CANOLES, P.C.**  
150 W. Main Street, Suite 2100  
Norfolk, VA 23514  
Telephone: (757) 624-3000  
Facsimile: (757) 624-3169  
senoona@kaufcan.com

Nathan W. McCutcheon (VSB #36308)  
**MORGAN, LEWIS & BOCKIUS LLP**  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
Telephone: (202) 739-3000  
Facsimile: (202) 739-3001  
nmccutcheon@morganlewis.com

Daniel Johnson, Jr.  
Michael J. Lyons  
Dion M. Bregman  
Ahren C. Hoffman  
Michael F. Carr  
Lorraine M. Casto  
Salah Kaihani  
Jason Gettleman  
**MORGAN, LEWIS & BOCKIUS, LLP**  
2 Palo Alto Square  
3000 El Camino Real, Suite 700  
Palo Alto, CA 94306-2122  
Telephone: (650) 843-4000  
Facsimile: (650) 843-4001  
djjohnson@morganlewis.com  
mlyons@morganlewis.com  
dbregman@morganlewis.com  
ahoffman@morganlewis.com  
mcarr@morganlewis.com  
lcasto@morganlewis.com  
skaihani@morganlewis.com  
jgettleman@morganlewis.com

Brett M. Schuman  
**MORGAN, LEWIS & BOCKIUS, LLP**  
One Market, Spear Street Tower  
San Francisco, CA 94105  
Telephone: (415) 442-1000  
Facsimile: (415) 442-1001  
bschuman@morganlewis.com

*Counsel for Plaintiff*

\_\_\_\_\_/s/\_\_\_\_\_  
Brent L. VanNorman (VSB #45956)  
**HUNTON & WILLIAMS LLP**  
500 East Main Street, Suite 1000  
Norfolk, VA 23510  
Telephone: (757) 640-5300  
Facsimile: (757) 625-7720  
bvannorman@hunton.com  
*Counsel for Defendants*